[APPELLATE CRIMINAL JURISDICTION]

Cussen, J.

December 21, 1937

YONG FATT.....Appellant.

v.

PUBLIC PROSECUTOR.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 63 of 1937]

Motor Vehicles Enactment (Cap. 168)—sections 44 (i) and 5 (ii)—Fixed route—Going outside fixed route—Plying for hire—Meaning of.

The appellant was the driver of a motor car which had been licensed for hire purposes on the route between Seremban and Mantin. On the 30th July, 1937, this motor car was stopped at Semenyih in Selangor while carrying three passengers. It appeared that these passengers had hired the motor car in Seremban to take them to Kuala Lumpur and back. He was charged with and convicted of failing to observe the conditions of his licence by failing to follow his fixed route.

Held, on appeal that the appellant was not plying for hire, in the circumstances.

"Plying for hire" explained.

E. Jeff for appellant.

R. C. Cunyngham-Brown, Deputy Public Prosecutor, for respondent.

CUSSEN, J.—The appellant was charged before the Court of the Magistrate at Kajang as follows:—

"That you on 30th July, 1937, at 9 a.m. being driver of H.N.S. 2331 did fail to observe the conditions of your licence by failing to follow the fixed route specified thereon, an offence under section 44 (i) of Enactment 3/38". (i.e., the Motor Vehicles Enactment, 1928.) He was convicted and fined $10.

Section 44 (i) reads:—

"44 (i). If a motor vehicle is used on the public thoroughfare without being licensed or being licensed except in conformity with all the terms and conditions of such licence.....the owner and driver of the motor vehicle shall be punished with a fine which may extend to $200/–".

The relevant facts are—

The motor car in question No. H.N.S. 2331 was licensed for hiring purposes, the licence being issued by the Registrar at Seremban.

Section 5 (ii) of the Enactment reads as follows:—

"5 (ii). The Registrar may subject the licence of a motor vehicle or carriage to be used for hire or trade purposes to conditions relating to the maximum weight or the maximum number of persons to be carried or to the route or routes on which such vehicle may ply for hire or otherwise".

The licence in question is in the Form D of the second schedule to the Rules under the Enactment. These forms were published in the *Gazette* of 28th December, 1934, as Notification 6207. The Form D shows the various particulars required to be filled in and provides a space opposite the word "Route". On the licence in question this "Route" is filled in as "Seremban-Mantin". It is clear and it is not disputed that this is a condition under section 5 (ii) relating to the route on which this car may ply for hire.

On 30th July, 1937, the car was stopped at Semenyih in Selangor by a police constable while proceeding towards Negri Sembilan—it contained three passengers.

That was the only evidence for the prosecution.

The accused gave evidence that the passengers in question had hired his car in Seremban to take them to Kuala Lumpur and back. For the purposes of the trial and of this appeal those facts are not in dispute.

In his judgment the learned Magistrate, after referring to section 5 (ii) of the Enactment, says:—

"Now in my opinion, this endorsement (i.e., the words—'Seremban-Mantin' route) on the licence is a condition which subjects the car to its particular route when plying for hire or even otherwise. The accused therefore cannot take it off the route fixed for it".

It is evident that the learned Magistrate has wrongly construed the words "or otherwise" in section 5 (ii). These words do not refer back to the words immediately preceding, i.e., "the route or routes on which such vehicle may ply for hire", but confer upon the Registrar a general power to subject the licence to conditions other than those described in the preceding words of the section 5 (ii). That this is so is evident if we compare section 5 (ii) with the corresponding section in the former Enactment—The Traction Engines and Motor Cars Enactment, 1912, which was repealed by the present Enactment.

Section 4 (i) of the former Enactment reads:

"4 (i).....no traction engine or motor car shall be used for hire or trade purposes on a public thoroughfare except under a license expressly authorising such use and except in conformity with all the terms of such licence, *whether relating to the maximum load or the maximum number of persons to be carried* or otherwise".

This is also quite clear when we find the proper meaning of the expression "plying for hire".

In *Sales* v. *Lake*, (1922) 1 K.B. 553, 557 Lord Trevethin, C.J., defines it as follows:—

"In my judgment a carriage cannot accurately be said to ply for hire unless two conditions are satisfied (i) there must be a soliciting or waiting to secure passengers

by the driver or other person in control without any previous contract with them and (2) the owner or person in control who is engaged in or authorises the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers".

All the other English cases are to the same effect (*vide* English and Empire Digest, Vol. 42. p. 853). The essential meaning of the expression "plying for hire ' at any particular place or in any given area or on a stated route consists in the waiting for, soliciting, inviting, accepting passengers for hire, and not in any way in the mere act of conveying passengers.

The Indian Courts have adopted this meaning. In *Mayavaram (Local Fund Overseer)* v. *Pakkirrisami Thevan*, I.L.R. (1928) Mad. 527, 530, 531, 532 the judgment proceeds:—

> " The phrase 'to ply for hire' is used in the English as well as in the Indian Enactments relating to hackney and stage coaches and we have been shown no reason why the same signification should not be attached to it in India as in England.....This case (1922, 1 K. B. 553) is therefore authority not only for the view that 'plying for hire' is an act which results in the vehicle being hired and not an act consequential upon the hiring but also for a distinction between plying for hire, that is obtaining passengers on the spot and without any previous arrangement, and merely letting out a car for hire by previous arrangement.....It is quite clear from these decisions that the act of plying for hire can only be done at the place and time that the hiring is effected".

Again in the case of *Sardul Singh* v. *The Crown* I.L.R. (1929) Lahore 505, 507, 509 we find the expression explained as follows:—

> " The term 'ply for hire' is not defined either in the rules or in the Indian Motor Vehicles Act. To 'ply' when applied to hackney carriages or vehicles literally means to wait at a stand or at a given place for customers'. As for instance if the owner of a vehicle keeps it at a stand or moves it about on the road with a view to its being engaged by any member of the public he is said to ply it for hire at the stand or on the road. In such a case by keeping the vehicle at the stand or moving it on the road he practically invites the public to engage it. In other words 'plying for hire' is synonymous with 'holding out to be hired' or 'soliciting custom' in the manner described."

These words then both in English law and in the Indian law have a clear definite meaning. and I see no reason nor do I consider it possible to attach any different meaning to them when they occur in our Motor Vehicles Enactment.

Appeal allowed. Finding and sentence reversed.